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7 MICHAEL ANGEL ULLOA II,
8 Plaintiff,
9 v.
10 SECURITAS SECURITY SERVICES
11 USA, INC.,
12 Defendant.

Case No. [23-cv-01752-DMR](#)

**ORDER ON MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

Re: Dkt. No. 25

13 In this putative class action, Plaintiff Michael Angel Ulloa II sues his former employer
14 Securitas Security Services USA, Inc. alleging wage and hour violations under California law.
15 Defendant moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff's first
16 amended complaint (FAC). [Docket No. 25.] This matter is suitable for resolution without a
17 hearing. Civ. L.R. 7-1(b). For the following reasons, the motion is denied.

18 **I. FACTUAL AND PROCEDURAL BACKGROUND**

19 Defendant employed Plaintiff as a "Flex Officer" from May 2022 to October 2022. As a
20 Flex Officer, Plaintiff filled in for security officers on leave, provided security for special events,
21 and temporarily staffed new accounts. [Docket No. 24 (FAC) ¶ 4.]

22 Plaintiff asserts the following claims in the FAC: 1) failure to provide required meal
23 periods in violation of California Labor Code sections 226.7 and 512; 2) failure to provide
24 required rest periods in violation of California Labor Code sections 226.7 and 512; 3) failure to
25 pay overtime wages in violation of California Labor Code sections 510 and 1194; 4) failure to pay
26 minimum wages in violation of California Labor Code sections 1194 and 1197; 5) failure to pay
27 wages due upon termination in violation of California Labor Code sections 201-203; 6) failure to
28 provide accurate, itemized wage statements in violation of California Labor Code section 226; 7)

1 failure to indemnify employees for necessary expenditures in violation of California Labor Code
2 section 2802; 8) unfair and unlawful business practices in violation of California Business &
3 Professions Code section 17200 *et seq.* (“UCL”); and 9) civil penalties under the California
4 Private Attorneys General Act of 2004 (“PAGA”), California Labor Code sections 2698-2699.

5 Plaintiff seeks to represent a class of “all current and former non-exempt employees of
6 Defendant[] in the State of California at any time within the period beginning four (4) years prior
7 to the filing of this action and ending at the time this action settles or the class is certified[.]” FAC
8 ¶ 6.

9 Plaintiff filed the complaint in state court on February 14, 2023. Defendant filed an
10 answer to the complaint on April 7, 2023. NOR ¶¶ 3, 4, Exs. 1, 2. Defendant removed the action
11 to this court on April 12, 2023 and moved pursuant to Rule 12(b)(6) to dismiss the complaint. The
12 court converted the motion to a Rule 12(c) motion for judgment on the pleadings and granted the
13 motion in August 2023. *Ulloa v. Securitas Sec. Servs. USA, Inc.*, No. 23-CV-01752-DMR, 2023
14 WL 5538276, at *3 (N.D. Cal. Aug. 28, 2023). In relevant part, the court dismissed Plaintiff’s
15 claims with leave to amend and dismissed his request for injunctive relief with prejudice. *Id.*
16 Plaintiff timely filed the FAC and Defendant again moves to dismiss.

17 **II. LEGAL STANDARD**

18 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims alleged in
19 the complaint. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).
20 When reviewing a motion to dismiss for failure to state a claim, the court must “accept as true all
21 of the factual allegations contained in the complaint,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)
22 (citation omitted), and may dismiss a claim “only where there is no cognizable legal theory” or
23 there is an absence of “sufficient factual matter to state a facially plausible claim to relief.”
24 *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citing
25 *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.
26 2001)) (quotation marks omitted). A claim has facial plausibility when a plaintiff “pleads factual
27 content that allows the court to draw the reasonable inference that the defendant is liable for the
28 misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted). In other words, the facts alleged

1 must demonstrate “more than labels and conclusions, and a formulaic recitation of the elements of
2 a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007) (citing
3 *Papasan v. Allain*, 478 U.S. 265, 286 (1986)); *see Lee v. City of L.A.*, 250 F.3d 668, 679 (9th Cir.
4 2001), *overruled on other grounds by Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir.
5 2002). “Taken together, *Iqbal* and *Twombly* require well-pleaded facts, not legal conclusions, that
6 plausibly give rise to an entitlement to relief.” *Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173,
7 1176 (9th Cir. 2021) (quotations and internal citations omitted).

8 As a general rule, a court may not consider “any material beyond the pleadings” when
9 ruling on a Rule 12(b)(6) motion. *Lee*, 250 F.3d at 688 (citation and quotation marks omitted).
10 However, “a court may take judicial notice of ‘matters of public record,’” *id.* at 689 (citing *Mack*
11 *v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986)), and may also consider “documents
12 whose contents are alleged in a complaint and whose authenticity no party questions, but which
13 are not physically attached to the pleading,” without converting a motion to dismiss under Rule
14 12(b)(6) into a motion for summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.
15 1994), *overruled on other grounds by Galbraith*, 307 F.3d at 1125-26. The court need not accept
16 as true allegations that contradict facts which may be judicially noticed. *See Mullis v. U.S. Bankr.*
17 *Court*, 828 F.2d 1385, 1388 (9th Cir. 1987).

18 III. REQUEST FOR JUDICIAL NOTICE

19 Defendant asks the court to take judicial notice of two documents: 1) a collective
20 bargaining agreement (“CBA”) between Defendant and Service Employees International Union,
21 United Service Workers West (“SEIU-USWW”), effective August 5, 2017 through September 30,
22 2022; and 2) a CBA between Defendant and SEIU-USWW effective October 1, 2022 through
23 June 30, 2026. [Docket No. 25-6 (Request for Judicial Notice (“RJN”), Exs. A, B.] Defendant
24 asserts that Plaintiff’s employment was covered by these CBAs. Mot. 3-4.¹ Plaintiff objects to the
25

26 ¹ Defendant also submits declarations by two witnesses regarding Plaintiff’s employment.
27 [Docket Nos. 25-1 (Magnanimo Decl. Sept. 25, 2023); 25-3 (Jingco Decl. Sept. 21, 2023).] The
28 court cannot consider them. *See Lee*, 250 F.3d at 688 (“when the legal sufficiency of a
complaint’s allegations is tested by a motion under Rule 12(b)(6), review is limited to the
complaint.” (cleaned up)).

1 court taking judicial notice of both documents. Opp'n 11-12.

2 Federal Rule of Evidence 201 permits a court to take judicial notice of adjudicative facts.
3 “The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is
4 generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily
5 determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).
6 According to Defendant, the court may take judicial notice of the two CBAs under Rule 201(b),
7 arguing that “[c]ourts routinely take judicial notice of collective bargaining agreements when
8 ruling on motions to dismiss.” RJN 2. However, the authority it cites for this proposition
9 involved cases in which a plaintiff referred to a CBA in the complaint, (*Stone v. Writer’s Guild of*
10 *Am. W., Inc.*, 101 F.3d 1312, 1314 (9th Cir. 1996)); a plaintiff challenged his termination with his
11 union and did not appear to object to the court’s taking judicial notice of the applicable CBA,
12 (*Busey v. P.W. Supermarkets, Inc.*, 368 F. Supp. 2d 1045, 1049-50 (N.D. Cal. 2005)); and
13 plaintiffs attached a copy of one CBA to the complaint and did not appear to object to the court’s
14 taking judicial notice of an additional CBA, (*Hall v. Live Nation Worldwide, Inc.*, 146 F. Supp. 3d
15 1187, 1190 & n.8 (C.D. Cal. 2015)). RJN 2. None of those circumstances are present here.

16 Defendant also argues that “[c]ourts routinely take judicial notice of documents found on
17 the internet” and identifies a web address that purports to “contain[] a copy of the full collective
18 bargaining agreement at issue.” RJN 2-3. None of Defendant’s cited cases stand for the
19 proposition that a court may take judicial notice of a CBA on the ground that it may be found
20 online. Accordingly, the court declines to take judicial notice of the CBAs.²

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22 ² In its reply, Defendant argues that the court may consider the CBAs under the doctrine of
23 incorporation by reference. Reply 2. The court declines to consider arguments raised for the first
24 time on reply. In any event, the doctrine does not apply here. The incorporation by reference
25 doctrine is “a judicially-created doctrine that treats certain documents as though they are part of
26 the complaint itself.” *Khoja v. Orexigent Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018).
27 This is to prevent “plaintiffs from selecting only portions of documents that support their claims,
28 while omitting portions that weaken—or doom—their claims.” *Id.* Incorporation by reference is
appropriate “if the plaintiff refers extensively to the document or the document forms the basis of
the plaintiff’s claim.” *Id.* (quoting *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003)).
However, if a document “merely creates a defense to the well-pled allegations in the complaint,
then that document did not necessarily form the basis of the complaint.” *Id.* Further, “the mere
mention of the existence of a document is insufficient to incorporate the contents of a document.”
Id. (quoting *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010)). The complaint
does not mention the CBAs and Defendant does not explain how Plaintiff’s claims rely on the

IV. DISCUSSION

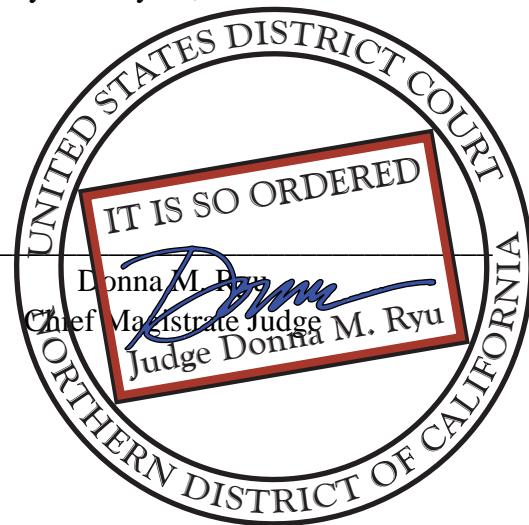
Defendant first argues that the CBAs that purportedly governed Plaintiff's employment contain grievance and arbitration provisions that cover the wage and hour claims in the complaint, and that Plaintiff is required to arbitrate claims for meal periods, rest breaks, unpaid wages, unreimbursed business expenses, and overtime. Mot. 13-14. Accordingly, it contends, the court must dismiss all claims in the FAC for "failure to exhaust the CBA's internal grievance mechanisms." *Id.* at 14. Defendant also asserts that the court should dismiss the FAC because all of the claims are preempted by the Labor Management Relations Act, 29 U.S.C. § 185, "because they rely on substantial analysis and interpretation of the CBA," Mot. 14, and goes on to analyze the terms of the CBA. *Id.* at 17-21. Finally, Defendant argues that the court should dismiss or strike Plaintiff's class claims from the FAC because the union waived employees' rights to bring class and/or collective actions. *Id.* at 22-23. As these arguments all rely on materials outside the complaint that Defendant has not established are judicially noticeable, the motion is denied.

V. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss the FAC is denied. Defendant shall file an answer to the FAC within 21 days of the date of this Order. The December 21, 2023 initial case management conference is continued to February 7, 2024 at 1:30 p.m. via Zoom videoconference. An updated joint CMC statement is due by January 31, 2023.

IT IS SO ORDERED.

Dated: December 18, 2023



CBAs, as opposed to the California Labor Code provisions cited in the complaint.